## REMARKS

This Amendment is submitted in conjunction with a Request for Continued Examination (RCE), and constitutes the required submission. This Amendment is responsive to the Final Office Action dated February 3, 2009 and to the Advisory Action dated April 6, 2009. Applicant has amended claims 1, 2, 8, 13, 17, 29, 30, 33, 39 and 44. Claims 1–44 remain pending.

### Interview Summary

In a telephonic interview initiated by Applicant's representative (Gregory J. Albin, Reg. No. 56,292) on April 30, 2009, the Examiner and Applicant's representative discussed independent claim 1 of the present application. Applicant's representative suggested a proposed amendment to independent claim 1 that would clarify: (1) that the "interrogation" of events from a medical device happens as a separate step from the "prioritization" of the events; and (2) that the "prioritization" of the events happens after the "interrogation" of the events. The Examiner indicated that such an amendment would overcome the rejection of claim 1 set forth in the Final Office Action dated February 3, 2009. No exhibits were presented and no agreement was reached between the Examiner and Applicant's representatives with respect to the claims.

### Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner also rejected claims 10 and 11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner stated that claims 9–11 are the same, and that these claims would all be treated as identical to claim 9 for purposes of examination. Applicant respectfully disagrees with this analysis, and notes that claims 9–11 recite distinct limitations. For example, claim 9 recites "prioritizing events obtained from the interrogation based on the relative importance" and claim 10 recites "assigning the relative importance based on a set of rules." These claims are clearly directed to different limitations. As one example, claim 10 requires that a relative importance be assigned to each of the events based on a set of rules while claim 9 does not have this requirement. As another example, claim 9 requires "prioritizing events" while claim 10 does not have this requirement. Because claims 9–11 recite distinct limitations, claims 9–11 should therefore be treated as

distinct claims. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 10 and 11 under 35 U.S.C. 112, second paragraph.

In the Office Action, the Examiner also rejected claims 35 and 36 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner stated that claims 34–36 are the same, and that these claims would all be treated as identical to claim 34 for purposes of examination. Applicant respectfully disagrees with this analysis, and notes that claims 34–36 recite distinct limitations. For example, claim 34 recites "wherein the instructions cause the processor to prioritize events obtained from interrogation based on relative importance" and claim 35 recites "assigning wherein the instructions cause the processor to assign the relative importance based on a set of rules." These claims are clearly directed to different limitations. As one example, claim 35 requires that instructions that cause a processor to assign a relative importance to each of the events based on a set of rules while claim 34 does not have this requirement. As another example, claim 34 requires instructions that cause a processor to "prioritize events" while claim 35 does not have this requirement. Because claims 34–36 recite distinct limitations, claims 34–36 should therefore be treated as distinct claims. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 10 and 11 under 35 U.S.C. 112, second paragraph.


**Claim Rejections Under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claims 1, 3, 4, 8–11, 13, 17, 22, 25, 29, 31–36, 38, 39 and 43 under 35 U.S.C. § 103(a) as being obvious over Rueter (U.S. Patent No. 5,944,745). The Examiner also rejected claims 2, 7, 12, 16, 18, 19, 23, 28, 30, 40, 41 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Rueter in view of Duffin et al. (U.S. Patent No. 6,292,698). In addition, the Examiner rejected claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Hwang (U.S. Patent No. 5,920,271), and rejected claims 20, 21 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Rueter in view of Webb et al. (U.S. Patent No. 7,060,031).

Applicant respectfully traverses these rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested a rational reason to arrive at the claimed invention.

### *Claims 1–7, 17–32 and 39–44*

Claim 1, as amended, is directed to a method that includes receiving events at a prioritization engine from a remote monitor, wherein the remote monitor obtains the events from interrogation of a medical device implanted within a patient, and wherein the events include therapy events and diagnostic events. As amended, claim 1 specifically requires wherein the prioritization engine and the remote monitor are both external to the patient. The method also includes prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the events based on the prioritization.

Applicant respectfully submits that the applied references fail to disclose each and every feature of Applicant's claim 1 as amended. As one example, the applied references fail to disclose or suggest *receiving events at a prioritization engine from a remote monitor, wherein the remote monitor obtains the events from interrogation of a medical device implanted within a patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitor are both external to the patient; prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the events based on the prioritization*, as required by amended claim 1.

In support of the rejection of Applicant's claim 1 prior to this Amendment, the Examiner cited to column 1, lines 44-48; column 1, line 65 to column 2, line 25; and column 3, lines 33-36 of the Rueter reference. The Examiner asserted that the cited portions of Rueter teach the prioritization engine recited in Applicant's claim 1. In general, the cited portions of Rueter describe an implantable medical device that includes a central processing unit (CPU) and a random access memory (RAM) for storing collected data. The CPU is designed to perform diagnostic routines in order to select the most important data for storage within the limited memory space of the RAM. In some cases, the CPU may overwrite less important information stored in the RAM with information that is more important so that the most important information is available when the information is later retrieved by an external device. Based on the portions of Rueter cited in the Final Office Action, it appears that the Examiner may have been interpreting the CPU in Rueter, which can determine if a new cardiac event is more important than an old cardiac event, as the "prioritization engine" recited in Applicant's claim 1. Applicant respectfully disagrees with this interpretation.

11

Applicant's claim 1, as amended, specifically requires "prioritizing, with the prioritization engine, the received events . . . wherein the prioritization engine [is] external to the patient." Contrary to the requirements of Applicant's claim 1, however, the CPU described in Rueter is contained within the implanted medical device itself, which when implanted, is not external the patient.[1] Thus, the CPU in Rueter fails to anticipate the prioritization engine recited in amended claim 1.

Moreover, it would not have been obvious to one of ordinary skill in the art to modify the CPU in Rueter such that the CPU would be external to the patient when the pacemaker is implanted in the patient. As already described above, the pacemaker in Rueter is specifically designed to store the most important information in a RAM having a limited amount memory space, and to discard data that is of lesser importance. If one were to modify Rueter such that the CPU was external to the patient, such a modification would prevent the pacemaker from determining which information is most important, which would in turn prevent the pacemaker from achieving its intended purpose (i.e., to store the most important information in a limited amount of RAM). If a proposed modification would render a prior art invention being modified unsatisfactory for its intended purpose, then the proposed modification would not have been obvious to a person of ordinary skill in the art.[2] Thus, it would not have been obvious to a person of ordinary skill in the art to modify the Rueter to arrive at the invention defined by Applicant's claim 1 as amended. Accordingly, Rueter fails to disclose or suggest each and every requirement of independent claim 1 as amended.

In the Advisory Action, the Examiner seems to have provided an alternative interpretation of the Rueter reference. In particular, the Examiner indicated that the "external programmer" in Rueter allegedly corresponds to the "prioritization engine" recited in Applicant's claim 1 prior to this Amendment. Applicant respectfully disagrees with the alternative interpretation of Rueter provided in the Advisory Action. Although the external programmer in Rueter is external to a patient, Rueter does not disclose that the external programmer prioritizes events, much less that the external programmer prioritizes events that are received from a remote monitor, which in turn obtains the events from interrogation of a medical device implanted within a patient, as required by Applicant's claim 1 as amended by this

---

[1] See Rueter, Figs. 1–3 and accompanying description.
[2] In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01.

Amendment. Accordingly, the "external programmer" in Rueter also fails to disclose or suggest each and every requirement of independent claim 1 as amended.

Independent claims 17, 29 and 39 have been amended to include limitations similar to the limitations recited in independent claim 1 as amended. Therefore, Rueter fails to disclose or suggest each and every requirement of independent claims 17, 29 and 39, as amended for at least the reasons described above with respect to amended claim 1. Moreover, claims 2–7, 18–28, 30–32, and 40–44 depend, either directly or indirectly, from one of independent claims 1, 17, 29 or 39. Therefore, for at least the reasons outlined above regarding these independent claims, Rueter fails to disclose or suggest each and every requirement of dependent claims 2–7, 18–28, 30–32, and 40–44. In addition, the other applied references fail to overcome the deficiencies already discussed above with respect to Rueter et al. Accordingly, Applicant submits that dependent claims 2–7, 18–28, 30–32, and 40–44 are allowable in view of the applied references. In light of the differences described with respect to the independent claims, Applicant reserves further comment concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Office Action has failed to establish a prima facie case for non-patentability of Applicant's claims 1–7, 17–32 and 39–44 under 35 U.S.C. § 103(a). Withdrawal of this rejection is respectfully requested.

### *Claims 8–16 and 33–38*

Claim 8, as amended, is directed toward a method that includes interrogating, with a remote monitor, a medical device implanted in a patient to obtain event data; and receiving, with a prioritization engine, the event data from the remote monitor, wherein the event data describes one of a therapy event and a diagnostic event. Claim 8 specifically requires that the prioritization engine is external to the patient. The method further includes assigning, with the prioritization engine, a relative importance to each of the received events.

Applicant respectfully submits that the applied references fail to disclose each and every feature of Applicant's claim 8 as amended. As one example, the applied references fail to disclose or suggest *interrogating, with a remote monitor, a medical device implanted in a patient to obtain event data; receiving, with a prioritization engine, the event data from the remote monitor, wherein the event data describes one of a therapy event and a diagnostic event, and*

13

*wherein the prioritization engine is external to the patient; and assigning, with the prioritization engine, a relative importance to each of the received events,* as required by amended claim 8.

Although independent claim 8 recites limitations that are substantially different from the limitations recited in independent claim 1, the Examiner offered an explanation for the rejection of claim 8 that was identical to the explanation offered for the rejection of claim 1. Thus, based on the portions of Rueter cited in the Final Office Action, it appears that the Examiner may have been interpreting the CPU in Rueter, which can determine if a new cardiac event is more important than an old cardiac event, as the "prioritization engine" recited in Applicant's claim 8. Applicant respectfully disagrees with this interpretation.

Applicant's claim 8 specifically requires "wherein the prioritization engine is external to the patient." Contrary to the requirements of Applicant's claim 8, the CPU described in Rueter is contained within the implanted medical device itself, which when implanted, is not external the patient. Thus, the CPU in Rueter fails to anticipate the prioritization engine recited in Applicant's claim 8. Moreover, it would not have been obvious to a person of ordinary skill in the art to modify the CPU in Rueter such that the CPU would be external to the patient when the pacemaker is implanted in the patient for at least the reasons described above with respect to independent claim 8. Accordingly, Rueter fails to disclose or suggest each and every requirement of independent claim 8.

In the Advisory Action, the Examiner seems to have provided an alternative interpretation of the Rueter reference. In particular, the Examiner indicated that the "external programmer" in Rueter allegedly corresponds to the "prioritization engine" recited in Applicant's claim 1 prior to this Amendment. Applicant assumes that the Examiner also intended this alternative interpretation to apply to Applicant's claim 8 prior to this Amendment. If this is the case, Applicant respectfully disagrees with the alternative interpretation of Rueter provided in the Advisory Action. Although the external programmer in Rueter is external to a patient, Rueter does not disclose that the external programmer assigns a relative importance to received events, much less that the external programmer assigns a relative importance to events that are received from a remote monitor, which in turn obtains the events from interrogation of a medical device implanted within a patient. Accordingly, the "external programmer" in Rueter also fails to disclose or suggest each and every requirement of independent claim 8 as amended.

Independent claim 33 has been amended to include limitations similar to the limitations recited in independent claim 8 as amended. Therefore, Rueter fails to disclose or suggest each and every requirement of independent claim 33 for at least the reasons described above with respect to amended claim 8. Moreover, claims 9–16 and 35–38 depend, either directly or indirectly, from one of independent claims 8 or 33. Therefore, for at least the reasons outlined above regarding these independent claims, Rueter fails to disclose or suggest each and every requirement of dependent claims 9–16 and 35–38. In addition, the other applied references fail to overcome the deficiencies already discussed above with respect to Rueter et al. Accordingly, Applicant submits that dependent claims 9–16 and 35–38 are allowable in view of the applied references. In light of the differences described with respect to the independent claims, Applicant reserves further comment concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.
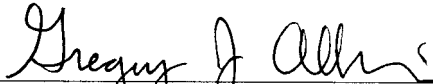
For at least these reasons, the Officer Action has failed to establish a prima facie case for non-patentability of Applicant's claims 8–16 and 33–38 under 35 U.S.C. 103(a). Withdrawal of this rejection is respectfully requested.

## CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: May 4, 2009

SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive, Suite 300
Woodbury, Minnesota 55125
Telephone: 651.286.8366
Facsimile: 651.735.1102

By: _____

Name: Gregory J. Albin
Reg. No.: 56,292